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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,208	11/02/2005	Lidia Elfstrand	05822.0323USWO	9970
23552 7590 08/18/2008 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER				
BASQUILL, SEAN M				
ART UNIT		PAPER NUMBER		
4161				
MAIL DATE		DELIVERY MODE		
08/18/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/534,208

**Applicant(s)**

ELFSTRAND ET AL.

**Examiner**

Sean Basquill

**Art Unit**

4161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/86)  
Paper No(s)/Mail Date 5 June 2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Priority*

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(c) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicants are hereby entitled to the effective filing date of the International Application PCT/SE2003/001696, November 4, 2003, and the priority date of November 6, 2002 on the basis of Swedish Application 0203265-4.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 1-13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,202,546 (hereinafter "Scammell"), in view of U.S. Patent 3,689,290 (hereinafter "Blackstock").

Scammell discloses bovine colostrum (C.1, L.58), with a reduced microbial content which retains active forms of the biological proteins contained therein as a supplement for dairy products including, inter alia, bovine milks of various forms. (C.1, L.40-55). This combination contains undenatured antibodies and growth factors found in bovine colostrum. (C.3, L.36-38). This colostrum extract may or may not retain colostrum fat, depending on whether it has been skimmed. (C.2, L.40-42). When combined as intended with various bovine milks, the colostrum composition will have retained whatever fat content possessed by the milk to which it is added, as well as whatever colostrum fat has been retained in combination with whey proteins naturally present in bovine milk. The examiner notes that the terms “up to,” “less than,” and “not more than” of claims 5, 6, and 7 include within their scope water retaining capacities, bound water content, and free water contents respectively of zero.

3. Scammell does not disclose the combination with organic particulate matter, nor are specific ranges or concentrations of colostrum, organic particulate matter, water retaining capacity, free and bound water content, pH, insoluble dietary fibers, or vegetable fat.

Blackstock describes the use of organic edible materials to carry synthetic flavorings comprising food grade flaked starch particles made from such edible starches as corn, soy, and pearl starch which may also contain fibrous matter in sizes ranging from 12-100 mesh, but which are capable of being particulated to a desired size and configuration. (C.2, L.6-18). Blackstock goes on to indicate that fats, particularly edible vegetable fats, and more particularly cottonseed, peanut, soy, coconut oils and the like are usable in combination with the aforementioned vegetable starch in forming the food particles. (C.2, L.29-30; 46-51).

Because Scammell teaches the formulation of a dairy product comprising bovine colostrum, and it is well within the capacity of one of ordinary skill in the art, using the teachings of Scammell to combine the colostrum dairy supplement with the starch-based foodstuffs disclosed in Blackstock to arrive at the claims of the instant invention. It is further well within the capacity of one of ordinary skill in the art to vary concentration of organic particulate matter, fat content, bioactive bovine colostrum and the concentration of IgG1 contained therein as a routine maximization of ranges of components well known in the art. The above cited references therefore teach all limitations of the instant claims, rendering them obvious over the cited art.

4. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scammell and Blackstock, as described above, and further in view of U.S. Patent 5,846,569 (hereinafter "Anderson").

Scammell discloses the use of bovine colostrum as described above in combination with the food particles of Blackstock, but does not specify the use of bovine colostrum powder.

Anderson describes the use of commercially available colostrum powder from Immuno-Dynamics of Perry Iowa. (C.2, L.65-67). This commercially available colostrum powder comprises 5% water, about 55% protein, 27% immunoglobulins, and no more than 14% fat from the colostrum, and is one of many such colostrum powders known to the market. (C.3, L.9-16).

Because Scammell teaches the formulation of a dairy product comprising bovine colostrum, and it is well within the capacity of one of ordinary skill in the art, using the teachings of Scammell, Blackstock, and Anderson to arrive at the claims of the instant invention. The above cited references therefore teach all limitations of the instant claims, rendering them obvious over the cited art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Basquill whose telephone number is (571) 270-5862. The examiner can normally be reached on Monday through Thursday, between 8AM and 6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Nolan can be reached on (571) 272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sean Basquill  
Art Unit 4161

/Patrick J. Nolan/  
Supervisory Patent Examiner, Art Unit 4161